

**BEFORE THE
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD**

In the Matter of the Philadelphia Water	:	2024 TAP-R Reconciliation
Department's Proposed Changes in Rates and	:	Proceeding – FY 2025
Related Charges	:	

HEARING OFFICER REPORT

Marlane R. Chestnut
Hearing Officer

May 29, 2024

TABLE OF CONTENTS

I.	SUMMARY OF RECOMMENDATION.....	1
II.	HISTORY OF THE PROCEEDING	1
III.	PROPOSED RATES AND TERMS	6
IV.	DISCUSSION	9
V.	CONCLUSION	16

I. SUMMARY OF RECOMMENDATION

This report addresses the filing made by the Philadelphia Water Department (PWD or Department)¹ to implement the annual reconciliation adjustment to the Tiered Assistance Program Rate Rider (TAP-R) by revising related water, sewer and fire service connection quantity charges (2024 TAP-R adjustment) in accordance with the TAP-R tariff previously approved by the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board). As discussed in more detail below, I recommend that the Rate Board accept without modification the proposed TAP-R rates contained in the [Joint Petition for Settlement of the TAP-R Proceeding](#)² (Joint Petition, Settlement Petition) for service rendered on and after September 1, 2024 (Fiscal Year 2025). The effect is to increase the current TAP-R rates, with charges for water and sewer service set at \$3.08/Mcf (water) and \$4.40/Mcf (wastewater) rather than the \$4.19/Mcf (water) and \$6.04/Mcf (wastewater) originally requested.

II. HISTORY OF THE PROCEEDING

On February 28, 2024, the Department filed an [Advance Notice](#)³ with Philadelphia City Council and the Rate Board of its request to implement the annual reconciliation adjustment to the Tiered Assistance Program Rate Rider (TAP-R) and to revise related water, sewer, and fire service connection quantity charges accordingly.⁴ [Formal Notice](#)⁵ of the proposed reconciliation adjustments was filed with the Department of Records on April 1, 2024. Both Notices contained supporting schedules and exhibits as required by the [Regulations](#)⁶ (Sections II.A.2 and II.C.1) promulgated by the Rate Board. The [Formal Notice](#) consisted of schedules (Schs. BV 1-5, Schs.

¹ The Water Department is a City department, with responsibility for provision of water, sewer and stormwater services in the City of Philadelphia. It also makes wholesale water sales to neighboring communities.

² <https://www.phila.gov/media/20240523115847/TAP-R-Joint-Petition-for-Settlement-Combined.pdf>

³ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/#advance-notice>. Advance notice is required under Philadelphia Code, § 13-101(7), and Section II.A.2 of the Rate Board's Regulations.

⁴ TAP is a customer assistance program, mandated by City Council, that allows low-income customers to pay reduced bills based upon a percentage of their household income. See Philadelphia Code, § 19-1605 (calling the program "IWRAP"). The TAP-R rider, with parameters set by the Rate Board in its [2018 general rate determination](#), tracks revenue losses resulting from application of the TAP discount, in order to permit annual reconciliation if they are greater or less than projected. The TAP-R surcharge is charged to customers who do not receive the discount.

⁵ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/#formal-notice>. Formal notice is required under Philadelphia Code, § 13-101((7)-(8) and Section II.A.2(b) of the Regulations.

⁶ <https://www.phila.gov/media/20220204155914/WRBRegulationsAmended20210908reaffirmed20211013.pdf>

RFC 1-3) and exhibits (PWD Exhs. 1A and 1B) setting forth the calculations of the reconciliation and proposed rates and charges. The proposed TAP-R rates and charges are designed to take effect on September 1, 2024. (FY 2025).⁷

The general public was notified through information made available on the Rate Board's website as well as publication in Philadelphia newspapers. Legal notices related to the [Advance](#) and [Formal](#) Notices were timely published in three local newspapers. As well as the required legal notices published in various Philadelphia newspapers and the postings on the Rate Board's website, participants to PWD's 2023 general rate and TAP-R reconciliation proceedings were notified by e-mail of the instant proceeding and provided an opportunity to participate.

In addition to the Department, participants included the Public Advocate (Community Legal Services, selected by the Rate Board to represent the concerns of residential consumers and other small users); the City of Philadelphia Department of Revenue, Water Revenue Bureau (WRB);⁸ the Philadelphia Large Users Group (PLUG); and two individual customers, Lance Haver and Michael Skiendzielewski.

On March 4, 2024, participant Haver filed a [Motion to Require Public Hearings Before Public Advocate Is Appointed](#)⁹ (Haver PA Motion). By [Order](#)¹⁰ dated March 6, 2024, I denied this Motion as being made in bad faith and utterly without basis in law or fact. Mr. Haver filed a [Direct Appeal](#)¹¹ with the Rate Board, repeating his allegations. By [Notice of Opportunity](#)¹² dated March 27, 2024, Rate Board counsel provided that any participant that wished to respond to the appeal should do so no later than close of business April 4, 2024, as the Rate Board was likely

⁷ An updated Schedule RFC-3 was provided on April 29, 2024.

⁸ The Water Revenue Bureau, which is part of the City's Department of Revenue, provides all billing and collection functions for the Water Department.

⁹ <https://www.phila.gov/media/20240306132210/Haver-Motion-to-Require-Public-Hearings-Before-Public-Advocate-Is-Appointed.pdf>

¹⁰ <https://www.phila.gov/media/20240306132211/TAP-R-Haver-Order-2024-March-6.pdf>

¹¹ <https://www.phila.gov/media/20240327110026/Haver-Appeal-of-Water-ruling.pdf>

¹² <https://www.phila.gov/media/20240328110007/Notice-of-Opportunity-to-Respond-to-Haver-Direct-Appeal-2024-03-27.pdf>

to consider the matter at its April 10, 2024 regular meeting.¹³ The Public Advocate filed a [letter](#)¹⁴ with the Rate Board on April 4, 2024. At its regular meeting held on April 10, 2024, the Board unanimously denied the [Direct Appeal](#).¹⁵

A prehearing conference to address preliminary procedural issues was held (remotely via Zoom, a video teleconferencing platform) in this proceeding on April 10, 2024, following the deadline to register as a participant as of right, per Section I(m) of the Board's [Regulations](#). All participants were invited to attend; in addition, notice of the prehearing conference was posted on the Rate Board's website at the section labeled [2024 TAP-R Reconciliation Proceeding](#).¹⁶ At that prehearing conference, a schedule was adopted, and directives were issued regarding discovery and the holding of hearings. These determinations were memorialized in a [Prehearing Order](#)¹⁷ dated April 10, 2024.

Information requests were propounded by PWD, the Public Advocate, PLUG and Mr. Haver.¹⁸ These documents and the respective responses are posted on the Rate Board's website, listed as [Discovery](#).¹⁹ In accordance with the schedule contained in the April 10, 2024 [Prehearing Conference Order](#), the Public Advocate submitted [PA. St. 1](#),²⁰ the direct testimony of Lafayette K. Morgan, Jr. (Exeter Associates, Inc.). No other participant filed direct testimony.

¹³ He noted that while the Board has no obligation to consider this interlocutory appeal, it does have the discretion to do so. He further stated that "The Rate Board has no obligation to hear further arguments before deciding whether to hear the appeal or what if any relief it should grant."

¹⁴ <https://www.phila.gov/media/20240404115201/Public-Advocate-Reply-to-Haver-Direct-Appeal-2024-04-04.pdf>

¹⁵ [Meeting minutes](#), <https://www.phila.gov/media/20240509121051/4.10.2024-Meeting-Minutes.pdf>.

¹⁶ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/>

¹⁷ <https://www.phila.gov/media/20240411142155/TAP-R-PHC-Order-2024-April-10-FINAL.pdf>

¹⁸ Both PWD and the Public Advocate objected to Mr. Haver's respective information requests. Despite the pending objections, both participants made good faith responses to the objected discovery, and I allowed Mr. Haver to ask many of these questions of the respective witnesses at the technical hearing. As Mr. Haver was still not satisfied, I addressed the Department's objections at the technical hearing, ([Combined May 10, 2024 Transcript](#), pp. 256-70), and issued an Order Sustaining PA Objections to Haver Discovery on May 15, 2024.

¹⁹ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/#discovery>

²⁰ <https://www.phila.gov/media/20240429145445/PA-Testimony-Morgan-2024.pdf>

PWD presented rebuttal testimony ([PWD Rebuttal St. 1](#),²¹ revised) addressed to Mr. Morgan's recommendations and updated portions of the Department's [Sch. RFC-1](#).²²

After proper notice, public and technical review hearings were held (remotely via Zoom, with the option to participate telephonically) on May 10, 2024. Both the Department and the Public Advocate conducted outreach and notice to provide maximum public awareness of the scheduled hearings. In addition to notices and guidelines about participation posted on the various websites (Rate Board, PWD and CLS/Public Advocate) and social media, there were flyers, newspaper notices advertised by the Rate Board, blast emails to various groups of customers and interested parties such as community energy agencies and political offices. See, [PWD Hearing Exh. 1](#)²³; PA Post Hearing Exh. 1. In addition, there was an article about the hearings in the *Philadelphia Inquirer*. The combined stenographic [transcript of the public and technical hearings](#)²⁴ is posted on the Rate Board's website, under both the [Public Hearing](#)²⁵ and [Technical Hearing](#)²⁶ tabs of the [2024 TAP-R Reconciliation Proceeding](#) section.

The public hearing was well attended, especially when compared to the public participation of previous annual reconciliation proceedings. PWD prepared a [Public Presentation](#),²⁷ which was posted on the Rate Board's website. Nine customers made statements, mostly directed to affordability and availability of other funding sources.²⁸ In addition, the Rate Board received written comments from 26 customers, all of which are made part of the record and posted on the Rate Board's website at the 2024 TAP-R Reconciliation Proceeding, [Public Input](#)

²¹ https://www.phila.gov/media/20240507101749/2024-TAP-PWD-REBUTTAL-STATEMENT-1-REBUTTAL-TESTIMONY-TO-PUBLIC-ADVOCATE-WITNESS_Final.pdf

²² <https://www.phila.gov/media/20240507101746/Rebuttal-Exhibit-RFC-1.xlsx>

²³ <https://www.phila.gov/media/20240514141340/PWD-2024-TAP-R-Hearing-Exhibit-1-Public-Outreach.pdf>

²⁴ <https://www.phila.gov/media/20240517084837/2024-TAP-R-Combined-Public-and-Technical-Hearing-Transcript.pdf>

²⁵ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/#public-hearing>

²⁶ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/#technical-hearing>

²⁷ <https://www.phila.gov/media/20240508184714/TAPR-PublicPresentation-2024.05.08.pdf>

²⁸ Two customers had specific billing questions. Another customer expressed concern about the propriety of automatic enrollment of the PWD low-income customers who were deemed prequalified through the data sharing process.

section.²⁹ Subsequently, the Department provided a [Response](#)³⁰ to questions raised at the public hearing.

The technical hearing was held immediately after the public hearing; a number of customers remained to observe the technical hearing after the public hearing had been concluded. At the technical review hearing, PWD, the Public Advocate and WRB made their witnesses available for cross-examination. Cross-examination of PWD’s witness panel (consisting of Raftelis Financial Consultants, Black & Veatch Management Consulting LLC and Susan Crosby, Deputy Revenue Commissioner in charge of the WRB) and of PA witness Mr. Morgan was conducted by the Department, Public Advocate and Mr. Haver. A number of hearing exhibits were submitted. See, [PWD Hearing Exh. 1](#)³¹; [PWD Hearing Exh. 2](#)³²; [PWD Hearing Exh. 3](#)³³; [PWD Hearing Exh. 4](#) and PA Post-Hearing Exhibit.

On May 17, 2024, individual participant Skiendzielewski submitted a “Direct Appeal” to the Rate Board, in which he alleged that I committed “censorship” by not permitting the inclusion on the Rate Board’s website of an article and various emails he had submitted.

On May 20, 2024, PWD and the Public Advocate (Joint Petitioners) filed a [Joint Petition for Settlement of TAP-R Proceeding](#).³⁴ They agreed to compromise on the projected average number of TAP participants for the next rate period (September 2024 through August 2025), utilizing 55,974, and further agreed that the average discount should be \$40.00 per TAP participant and that the average monthly consumption should be 700 CF per TAP participant. Attached to the Joint Petition was Exh. 1, the proposed TAP-R rates and supporting data and calculations.

²⁹ <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/rate-proceedings/2024-tap-r-reconciliation-proceeding/#public-input>

³⁰ <https://www.phila.gov/media/20240520125516/2024-TAP-R-Responses-to-Public-Input-Hearing-Questions-FINAL.pdf>

³¹ <https://www.phila.gov/media/20240514141340/PWD-2024-TAP-R-Hearing-Exhibit-1-Public-Outreach.pdf>

³² <https://www.phila.gov/media/20240514141327/PWD-2024-TAP-R-Hearing-Exhibit-2.pdf>

³³ <https://www.phila.gov/media/20240514141328/PWD-2024-TAP-R-Hearing-Exhibit-3.pdf>

³⁴ Although it did not join in the proposed settlement, PLUG signed the Petition, stating that it did not oppose the Joint Petition.

Also on May 20, 2024, participant Haver filed a [Brief](#)³⁵ opposing any increase in the TAP surcharge. He did not address any of the substantive TAP-R reconciliation issues contained in the [Joint Petition](#) but criticized both me and the Public Advocate. Both the Department and the Public Advocate filed Main Briefs in support of the Settlement Petition on May 20, 2024. [PWD Main Brief](#),³⁶ [Public Advocate Main Brief](#).³⁷

An [Opposition to the Settlement Petition](#)³⁸ was filed by Mr. Haver on May 22, 2024. Again, he did not address the TAP-R reconciliation itself, but PWD's allegedly illegal actions in automatically enrolling pre-qualified TAP participants.³⁹ A responsive Reply Brief was submitted by the Department on May 24, 2024. PWD Reply Brief.

The Joint Petitioners' position is that the proposed rates provide a fair, just and reasonable TAP-R reconciliation adjustment, are supported by the record, are in compliance with all applicable ordinances, and are in the best interest of the Water Department and its customers. I agree. I therefore recommend that the Rate Board permit the Department to put the proposed rates and charges in effect for service rendered on and after September 1, 2024. I commend the parties to the settlement— and the counsel representing them — for their efforts in this proceeding to resolve the issues in an expeditious and reasonable manner, which benefits both PWD and its customers. Further, I find that Mr. Haver's objections to the proposed settlement rates are without merit and should be dismissed as discussed below.

III. PROPOSED RATES AND TERMS

The purpose of this proceeding is to permit an annual reconciliation of the revenue impacts associated with TAP by comparing PWD's actual experience to the projections used to set the rates for the review period. It is purely a calculation in which a formula already adopted

³⁵ <https://www.phila.gov/media/20240523211114/Brief-of-Participant-Lance-Haver-pdf.pdf>

³⁶ <https://www.phila.gov/media/20240523115848/PWD-MAIN-BRIEF-Combined.pdf>

³⁷ <https://www.phila.gov/media/20240523115849/Public-Advocate-Main-Brief-2024-TAP-R.pdf>

³⁸ <https://www.phila.gov/media/20240523211108/Haver-settelment-objection-pdf.pdf>

³⁹ As stated in the Overview of Mr. Haver's [Opposition](#), "The proposed settlement agreement is a collusion between PWD and the rate board's public advocate to cover up the impermissible actions of PWD in enrolling consumers in the TAP, without following the rules and regulations governing PWD. The chart provided with the settlement agreement does not show which costs were incurred during the time in which PWD did not have the legal right to enroll consumers in TAP, without affirmative permission, but did so any way without regard for the rule of law."

by the Rate Board is applied. Depending on the actual revenue experience, the rates and charges for the next rate period may be adjusted up or down.

TAP is an assistance program mandated by City Council⁴⁰ that allows eligible low-income customers (and customers who are facing specialized hardships defined in PWDs [Regulations](#),⁴¹ Section 206) to pay reduced bills based upon a percentage of their household income. Monthly bills are not based on usage; they are capped as a percentage of income and are constant each month while the customer is enrolled in the program.⁴²

TAP-R rates are charged to all customers who do not receive the discount and are intended to recover the revenue losses associated with the customer assistance program. The cost of the program (in other words, the lost revenue resulting from the discount) is affected by several factors, such as the number of enrolled customers, water and sewer service usage levels, changes in PWD's non-discounted rate and the level of discount needed to provide affordable bills to the customers enrolled in the program. The TAP-R Rider tracks revenue losses resulting from application of the TAP discount in order to permit annual reconciliation if they are greater or less than projected.

PWD's filing contained a substantial increase in the proposed TAP-R water and sewer rates for FY 2025, intended to recover discounts associated with a surge in TAP enrollment due to the prequalification of a significant number of PWD customers by the City's Office of Integrated Data for Evidence and Action (IDEA).⁴³ Both the Department and Public Advocate recognized this increase in participants (along with their projected consumption and anticipated TAP discounts) to develop their respective positions. As noted in the [Settlement Petition](#) at ¶ 21: "The Department's rebuttal testimony, and subsequent response to Public Advocate discovery

⁴⁰ See n.4 above.

⁴¹ <https://water.phila.gov/regulations/>

⁴² The TAP program was approved by the Rate Board as part of PWD's 2016 rate filing. See, [Rate Board 2016 Rate Determination](#). The TAP-R rate rider was approved as part of PWD's 2018 rate filing ([Rate Board 2018 Rate Determination](#)) and the specific surcharge rates were adjusted in the [2019](#), [2020](#), [2021](#), [2022](#) and [2023](#) annual TAP-R reconciliation proceedings.

⁴³ See <https://www.phila.gov/media/20240401131232/2024-TAP-R-formal-notice-final.pdf> at 59-60, Formal Notice at 51-52, Sch. RFC-1.

request PA-3-5, filed on May 9, 2024, included an exhibit designated as Exhibit PA TAP-3-5. This exhibit included customer specific usage, billing, and simulated discount amounts for the majority, approximately 75%, of the IDEA prequalified TAP participants, enabling the Department and Public Advocate to refine their respective estimates of average discounts for TAP participants, including those newly enrolled through the end of March 2024 via the IDEA Prequalification process.”

Based on that information, PWD and the Public Advocate agreed that for purposes of this proceeding, the projected average monthly number of TAP participants for the next rate period (September 2024 to August 2025) should be 55,974, that the average discount should be \$40.00 per TAP participant and that the average monthly consumption should be 700 CF per TAP participant.⁴⁴ This results in the proposed settlement surcharge rates of \$3.08/Mcf (water) and \$4.40/Mcf (Wastewater). [Settlement Petition](#), ¶¶ 25-26.

Another term of the Settlement Petition is the agreement that “. . .new TAP participants will be the focus of customer conservation efforts through programs such as the Low-Income Conservation Assistance Program (LICAP) and that all TAP participants will be encouraged to participate in LICAP through greater outreach efforts and incentives to participate. The Department will develop strategies to reach high usage TAP participants in order to deploy available water conservation and leak repair assistance.” [Settlement Petition](#), ¶ 36.

Other terms and conditions were contained in the [Joint Petition](#), ¶¶ 38-41, including the standard disclaimers that the settlement agreement is made without prejudice to each participant in this or other proceedings, and that the Joint Petitioners reserve their rights to withdraw from the proposed settlement in the event the Rate Board disapproves it or to file exceptions should the hearing officer modify or misstate any of the agreement’s terms and conditions.

⁴⁴ The settling participants expressly did not agree as to any methodology or calculation method to project TAP participation, average monthly consumption and discounts, or the calculation of TAP rates. [Settlement Petition](#), ¶ 26.

IV. DISCUSSION

As explained above, the proposed settlement rates will result in an increase in the TAP-R rates for the next rate period, due to the surge in enrollment of TAP-eligible customers. These rates, however, are much lower than those originally requested. These proposed settlement rates appear to be fair and reasonable and are consistent with the relevant ordinance and regulations established by the Rate Board. They are amply supported by the record, which establishes that they will provide a reasonable basis for recovery of the TAP costs in this proceeding.

The rates are based on a projected average monthly number of TAP participants for the next rate period (September 2024 to August 2025) of 55,974 – the same number originally projected by the Department – but with lower associated participant average consumption levels and discounts.⁴⁵ The projected average participant number is supported by the May 14, 2024 Transcript Response TR-2, the response to PA-3-5 and the updated Schedule RFC-3 (excerpted as [PWD Hearing Exhibit 3](#)), which shows that prequalification had already reached 49,658 in March 2024 and was expected to reach 55,974 in April 2024 rather than in June as per the Formal Notice). The Settlement Petition makes it clear that while its numbers result from calculations including discounts averaging \$40.00 based on average use of 700 ccf per month by 55,974 participants, the parties do not endorse any of the methodologies or calculation methods to project the number of TAP participants ([Settlement Petition](#), ¶¶ 25-26).

After discovery and thorough review, the settling parties (PWD, the Public Advocate) have found that use of this projected average monthly number of TAP participations, usage and discounts for the next rate period (September 2024 to August 2025) is reasonable. I agree, and further agree that the proposed rates represent a just and fair resolution of this annual reconciliation proceeding. Because TAP-R reconciliation proceedings reconcile actual costs of the program against costs projected in the prior year's proceeding, any difference in the agreed

⁴⁵ PWD projected that TAP participants would use an average of 726 ccf of water per month and receive an average discount of \$55.49. Formal Notice at 76, Sch. RFC-3 at 3, <https://www.phila.gov/media/20240401131232/2024-TAP-R-formal-notice-final.pdf>. Lafayette Morgan, for the Public Advocate, testified that, even assuming the validity of the numbers prior to prequalification, the numbers should be lowered because the newly prequalified participants currently used only 536.65 ccf per month and would receive discounts averaging only \$20.906. Morgan testimony at 7-9, <https://www.phila.gov/media/20240429145445/PA-Testimony-Morgan-2024.pdf> at 9-10.

monthly numbers now will result in an adjustment in next year's proceeding. For that reason, and in light of PWD's and the Public Advocate's reasonable resolution of the differences in the expert testimony, it would not be cost-effective for the Rate Board to attempt to determine each element of the projected TAP revenue loss levels with greater precision than the settlement numbers.

Therefore, the proposed rates and charges contained in the [Joint Petition](#), Exh. 1, should be approved without modification by the Rate Board for service rendered on and after September 1, 2024.

Another benefit of the [Settlement Petition](#) is the explicit reference to conservation assistance. This is especially important since the water bills of participants in the TAP program are not based directly on usage. I will note that this is directly responsive to concerns expressed by several of PWD's customers. For example, Shara Neidell in her [written comment](#)⁴⁶ stated: "Is there any monitoring of water usage for households that are part of the TAP-R program? And, if it shows substantial water use, does someone reach out with educational materials on limiting water used? What about installing low flow toilets and faucets?" Or Art DesJardins, who made a similar statement at the public hearing. [May 10, 2024 Transcript](#) at 73-76. It should be noted that this commitment is a significant voluntary agreement on the part of the Department, as the Rate Board lacks jurisdiction over non-rate matters and therefore could not have ordered these actions.

The final item to address is Mr. Haver's various objections to the proposed TAP rates. Apart from his continuing assaults on the character and competence of myself and the Public Advocate, his first argument is essentially that by allowing discussion of PWD's allegedly illegal acts in allowing automatic enrollment of prequalified potential TAP participants in February, March and April (when revised regulations explicitly allowing enrollment or recertification based on "Verified Administrative Data" went into effect) and not allowing him to introduce evidence of other issues ("PWD's misjudgments, poor decisions, lack of cost containment and missed opportunities for cost savings"), I have created a "two-tiered system of justice." As stated by Mr. Haver: "Despite the illegal actions, outside the scope of the regulations, outside the scope of the proceedings, the hearing examiner was not only silent, but supportive of the illegal activities.

⁴⁶ <https://www.phila.gov/media/20240503092635/s-neidell.pdf>

Contrast this to the hearing examiner’s rulings and admonitions that only things covered by the regulations will be allowed into the record.” [Brief](#) at 3, and throughout.

This argument is meritless on its face, and certainly provides no reason to reject the proposed settlement. A customer, James Aleo, stated in a [written comment](#)⁴⁷ and also commented at the public hearing that in his opinion, automatic enrollment of these prequalified potential TAP participants was not permitted by PWD’s then-current regulations or under City Council’s authorization of the program . I thought this was an interesting statement, and asked counsel for PWD and the Public Advocate to respond. They did so, both at the hearing and later, in PWD’s [Response to Public Input Hearing Questions #2](#). This action has nothing to do with my refusal to allow discovery or questions on issues clearly outside the scope of this limited proceeding.

In his May 22, 2024 [Opposition](#), Mr. Haver repeated his position that “The proposed settlement agreement is a collusion between PWD and the rate board’s public advocate to cover up the impermissible actions of PWD in enrolling consumers in the TAP, without following the rules and regulations governing PWD. The chart provided with the settlement agreement does not show which costs were incurred during the time in which PWD did not have the legal right to enroll consumers in TAP, without affirmative permission, but did so any way without regard for the rule of law. PWD should not be allowed to collect from consumers for actions it was not legally entitled to make. The rate board’s advocate instead of colluding to cover up the malfeasance of PWD should stand for the rule of law.” [Opposition](#) at 1.

In its Reply Brief, PWD responded to this assertion. It stated that the proposed settlement rates are “fair, just and reasonable,” are supported by the record, are in compliance with all applicable ordinances and are in the best interest of the Department and its customers.” Reply Brief at 2. Specifically, it explained that there is no basis for rejection of the proposed settlement rates as requested by Mr. Haver because (1) PWD’s regulations, even prior to the recent amendment specifically referencing use of “Administratively Certified Data” allowed the

⁴⁷ <https://www.phila.gov/media/20240509105322/j-aleo.pdf>

inclusion of prequalified enrollments and (2) the projected increases in TAP enrollment based on IDEA data sharing are reasonable.⁴⁸

In enacting the IWRAP program, now known as TAP, City Council provided for eligibility “in all cases to require showing of financial or Special Hardship” and that “Customers demonstrating monthly household income that is Low-Income shall have satisfied this eligibility requirement.” [Phila. Code](#) § 19-1605(3)(g).⁴⁹ The Water Department must enroll a customer “upon approval of a completed application,” with the applicant bearing the burden of proving residency and the requisite level of financial hardship under standards set by the Department of Revenue. [Phila. Code](#) § 19-1605(3)(i)(.1). But while this language requires eligibility upon completion of a supported application, and while other language in the Code presumes an affirmative application,⁵⁰ no language affirmatively requires that the customer be the one to initiate an application.

Similarly, Section 206.2 of the [Water Department’s Regulations](#), before and after the recent amendment,⁵¹ provides as follows:

(a) A Low-income Customer or a Customer with a Special Hardship may apply to the WRB for enrollment in TAP beginning July 1, 2017. A Customer may submit the required financial and other information through a web-based application, by mail or by hand delivery to WRB’s office. A Customer also may provide the required information to a customer service representative.

⁴⁸ The third reason proffered by PWD, that the IDEA pre-qualified enrollments were in “direct response to Rate Board directives” (Reply Brief at 6) is incorrect. In the most recent general rate proceeding, the Rate Board acknowledged and encouraged the “cross enrollment/precertification” made possible by the data sharing, but expressly noted its limited authority to order such actions: “The record is clear that increasing the enrollment of eligible TAP participants not only helps those customers maintain essential water and sewer services but also increases PWD’s overall collections. We would be remiss if we did not strongly encourage the Department and other City agencies to consider and take all cost-effective steps to increase and maintain enrollment for eligible customers that cannot otherwise pay their water and sewer bills in full. We recognize that we do not have the expansive authority of the Public Utility Commission in this area. The Department is correct that the Board cannot direct PWD or other City agencies in collections efforts and cannot mandate the specific implementation design of low-income assistance programs like TAP.” [Rate Determination, 2023 General Rate Proceeding](#) at 46-47.

⁴⁹ https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-266407

⁵⁰ E.g., [Phila. Code](#) § 19-1605(3)(k): “Any decision or determination of the Department [of Revenue] relating to . . . (iv) the completeness of a customer’s application, and the adequacy or completeness of any documentation submitted in connection with an application . . . , shall be provided to the customer in writing”

⁵¹ Section 206.2(b).

(1) A Customer who demonstrates Monthly Household Income at or below 150% of the Federal Poverty Level shall be deemed to have satisfied the financial or Special Hardship eligibility requirement.

This Regulation, like the Code, appears to presume but not to require affirmative application. Indeed, as pointed out by the Department in its Reply Brief at 3, the repeated use of the word “may” (rather than shall or must) as well as the list of options available for customers to provide their information for TAP enrollment leads to a permissive interpretation. In addition, as PWD noted further in its Reply Brief at 3-4, based on its interpretation of the prior regulation, WRB enrolled eligible customers from the Low-Income Housing Water Assistance Program (LIHWAP) in 2023 without the necessity of separate applications.

Regulation 206 was recently amended⁵² to explicitly include the use of “Verified Administrative Data”⁵³ for TAP enrollment or recertification: by adding a new subsection, 206.2(b): “WRB may enroll or recertify a Low Income Customer into TAP using Verified Administrative Data.” As noted by PWD in its Reply Brief at 4, this data had already been provided by customers for the purpose of determining available assistance.

While I question whether the Rate Board or I have the authority to determine whether the enrollment of these prequalified customers was proper, under the totality of the circumstances – City Council’s clearly expressed intention that “bills shall be affordable for low-income households,”⁵⁴ as well as the Rate Board’s findings last year that “It is essential that as many eligible people as possible who need assistance enroll in the program in order to maintain their service”⁵⁵ and that “increasing the enrollment of eligible TAP participants not only helps those customers maintain essential water and sewer services but also increases PWD’s overall

⁵² The proposed amendment was filed with the Department of Records in March 2024, and took effect on April 29, 2024.

⁵³ Verified Administrative Data is defined in Section 206.1(p) as Information possessed by the City such as personal income, household income, or residency information required to confirm a Customer’s eligibility for TAP, the Senior Citizen Discount, or other forms of assistance.”

⁵⁴ Phila. Code § 19-1605(3)(a)

⁵⁵ [Rate Determination](#) in 2023 General Rate Proceeding, at 43.

collections”⁵⁶ -- I cannot find that the Rate Board should deny the cost of discounts actually granted by the Department.

I cannot determine that PWD’s actions in enrolling these customers were “illegal” as alleged by Mr. Haver, or even improper, even during the brief period before the regulation was amended to expressly permit the use of the City’s “verified administrative data” under Sections 206.1(p) and 206.2(b). In any event, as explained by counsel for PWD, every such person was sent a letter allowing them to opt out of the TAP program if they wished. “There were letters that went out indicating that they were to be signed up in the program, and there’s an opt out provision in the letter.” [May 10, 2024 Transcript](#) at 27. Therefore, there is no basis for Mr. Haver’s position that “PWD should not be allowed to collect from consumers for actions it was not legally entitled to make.” [Objection](#) at 1.

As Mr. Haver states, I have made numerous rulings concerning the scope of this proceeding. I informed him – repeatedly – that this is a TAP-R reconciliation proceeding, not a general rate proceeding. The scope of this limited, annual reconciliation proceeding is set out in the Rate Board’s [Regulations](#) at Section II.C.1(c), which provides that “The Reconciliation Statement shall include: (1) the new TAP-R and all rates and charges that will increase or decrease because of the new TAP-R; (2) supporting calculations for the new TAP-R in accordance with the formula approved by the Board in the most recent General Rate Proceeding; (3) underlying data and assumptions utilized in determining the proposed TAP-R; and (4) a bill comparison showing the effects of the revised rates on bills for typical Small User Customers.” Thus, this proceeding does not include issues such as whether there should be a customer assistance program, the design and administration of such a program or the administrative costs associated with operating it. I explained – repeatedly - that these issues are clearly not relevant in this reconciliation, although they may be relevant in a general rate proceeding (where rates are set on the basis of a revenue requirement that is designed to recover prospective expenses and capital costs, as required by [Philadelphia Code](#) § 13-101(4)).⁵⁷

⁵⁶ *Id.* at 47.

⁵⁷ The transcript will reflect that despite my various rulings, I did allow him to pose many questions to the PWD and PA witnesses that were clearly outside the scope of their testimony.

Mr. Haver’s second objection is that the public hearing was insufficient, since it was held remotely, “making it impossible for citizens to use their constitutional rights . . . The Hearing Examiner colluded with the rate board’s public advocate and PWD’s counsel to make the hearing virtual, in the hearing examiner’s own words, because the virtual ‘hearings are also cost-effective, as travel time and expenses will not need to be incurred by me and the participants’ representatives.” [Brief](#) at 4. Mr. Haver further explains that he was deprived of the opportunity to carry a sign and pass out flyers, [Brief](#) at 4-5.

This issue is addressed by PWD in its [Brief](#) at 18: “The Department submits that the above-described criticisms should be rejected by the Board. The Rate Board regulations address the administration of the hearing process and related outreach. The directives of the Hearing Officer were consistent with the aforesaid regulations and hearing procedures to be followed by the participants in this proceeding were clearly communicated. Moreover, outreach efforts for the public input hearings (as undertaken by the Department and Public Advocate) were extensive in this case — exceeding the requirements in the applicable regulations. Public input hearing participation also exceeded prior TAP-R proceedings.” I agree, and will note further that this is not a general rate proceeding brought pursuant to Sec II.B of the [Board’s Regulations](#) but a TAP reconciliation subject to Sec II.C.2, which explicitly recognizes that the annual TAP-R reconciliation process is designed to be flexible.

Finally, although not directed at me for resolution, I must address Mr. Skiendzielewski’s claim in his “Direct Appeal” that I had “censored” him by refusing to permit irrelevant and/or scurrilous material to be posted on the Rate Board’s website. I did allow an email exchange between him and me (he objected to the hearing being held remotely, and I responded) to be posted, as it was directly relevant to this proceeding (although not to the substantive issues presented).⁵⁸ Mr. Skiendzielewski sends MANY emails, most arising out of his complaint regarding the Rate Board’s counsel over an incident that occurred many years ago. Here, he alleges

⁵⁸ In fact, by email dated April 30, 2024, I informed him: “Mr. Skiendzielewski: No, emails are not posted on the Rate Board's website. If you would like to make a comment on any of the issues involved in this TAP-R reconciliation filing, including the use of virtual hearings, please follow the instructions contained in the notice, and it will be included in the public comment section: ‘If you would prefer to send comments in writing, you may email them to WaterRateBoard@phila.gov by May 14, including your name and address.’”

that “The hearing examiner’s decision to strike my public testimony,⁵⁹ without an objection filed by any participant, based solely on her displeasure with the content, must be overturned.” First, the fact that it was unobjected to is irrelevant. I have the authority as set out in the Rate Board’s [Regulations](#) at Section II.B.1(b)(4) to “Make all procedural rulings necessary to conduct a fair, impartial and expeditious hearing process, including the exclusion of irrelevant or redundant testimony or evidence.” More importantly, comparing it to other testimony presented by customers at the public hearing is inapt. These brief comments by other witnesses (listed in the “Direct Appeal” as conservation, rain barrels and billing questions) may not have been relevant to the actual subject matter of this limited proceeding but were directly related to the Water Department and were brief statements presented in public testimony. In contrast, other than his pre-filed comment with respect to his objection to virtual hearings which I allowed into the record as a customer comment, Mr. Skiendzielewski’s subsequent e-mails have nothing to do with the 2024 TAP-R reconciliation filing (or the [Settlement Petition](#)), and therefore lack relevance.

V. CONCLUSION

1. As provided in the Rate Board’s [Regulations](#) at § II.C.3.b, the record in this proceeding includes the [Advance Notice](#), the [Formal Notice](#), [motions and procedural orders](#), responses to written [discovery](#), [participant testimony](#), [procedural notices](#), [public input](#), the [public hearing](#) and associated documents, the [technical hearing](#) and associated documents, the [Joint Settlement Petition and associated documents](#), this Hearing Report and associated documents. All of these documents are or will be posted on the Rate Board’s website, [2024 TAP-R Reconciliation Proceeding](#).

2. I recommend that the Rate Board approve the rates and charges contained in the [Joint Petition for Settlement](#) of the TAP-R Proceeding without modification and find that the modified TAP-R rates and charges are supported by the record and are just and reasonable.

⁵⁹ I did not “strike” his testimony. He sent this article (and another email from 2016) as public comment.

3. I recommend that the Rate Board authorize the Water Department to file revised TAP-R rates and charges as contained in [Joint Petition for Settlement of the TAP-R Proceeding](#), Exh. 1, for service rendered on and after September 1, 2024.

Marlane R. Chestnut
Hearing Officer

May 29, 2024